

APPEAL NO. 031296  
FILED JULY 8, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on May 8, 2003. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) sustained a compensable injury on \_\_\_\_\_, and had disability beginning on January 31, 2003, and continuing through April 18, 2003. The hearing officer determined that the carrier contested the claimant's claimed injury of \_\_\_\_\_, in accordance with Section 409.021 and did not waive the right to contest the compensability of the claimant's claimed injury. The appellant (carrier) appealed the determinations of compensability and disability on sufficiency of the evidence grounds and asserted evidentiary error. The appeal file does not contain a response from the claimant to the carrier's appeal. The hearing officer's determination that the carrier did not waive the right to contest compensability of the claimant's claimed injury of \_\_\_\_\_, was not appealed and is now final. Section 410.169.

DECISION

Affirmed.

Regarding the exclusion of the carrier's surveillance videotape of the claimant, Carrier's Exhibit No. 25, for lack of timely exchange, we have frequently held that to obtain reversal of a judgment based upon the hearing officer's abuse of discretion in the admission or exclusion of evidence, an appellant must first show that the admission or exclusion was in fact an abuse of discretion, and also that the error was reasonably calculated to cause and probably did cause the rendition of an improper judgment. Texas Workers' Compensation Commission Appeal No. 92241, decided July 24, 1992; see also Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ). It has also been held that reversible error is not ordinarily shown in connection with rulings on questions of evidence unless the whole case turns on the particular evidence admitted or excluded. Atlantic Mut. Ins. Co. v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). We find no abuse of discretion in the hearing officer's application of the exchange-of-evidence rules and, further, note that the admission of the exhibit would not have necessitated a different decision in this case.

Whether the claimant sustained a compensable injury and had disability are factual questions for the hearing officer to resolve. The hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence, as well as the weight and credibility that is to be given to the evidence. Section 410.165(a). The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We have reviewed the injury and

disability determinations and conclude that the hearing officer's decision is supported by sufficient evidence. We affirm the decision and order of the hearing officer regarding whether the claimant sustained an injury and had disability.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **BANKERS STANDARD INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MARCUS MERRITT  
C/O ACE USA  
6600 CAMPUS CIRCLE DRIVE, SUITE 200  
IRVING, TEXAS 75063.**

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Gary L. Kilgore  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge